

General Order

Houston Police Department



ISSUE DATE:

May 9, 2019

NO.

700-09

REFERENCE: Supersedes all prior conflicting Circulars and Directives, and General Order 700-09, dated August 27, 2012

SUBJECT: PHOTOGRAPH AND LINEUP IDENTIFICATION PROCEDURES

POLICY

Witness identification is a frequently used investigative tool. As such, officers shall adhere to the procedures outlined in this General Order to reduce erroneous eyewitness identifications and to enhance the reliability and objectivity of eyewitness identifications.

Additionally, irrespective of the identification, or lack thereof, of a suspect, officers are required to diligently follow up with the investigation by seeking corroborating evidence, documenting the identification procedures utilized, and completing all appropriate reports pursuant to General Order 600-27, **Preliminary and Follow-Up Investigations**.

Every effort shall be made to determine that each witness is literate and proficient enough in the English language to participate in a viewing. Officers shall follow the guidelines set out in General Order 500-23, **Use of Interpreters: Providing Services to Limited English Proficient Persons**, if they encounter a witness who is a limited English proficient individual.

Officers shall follow the guidelines set out in General Order 500-13, **Dealing with the Deaf or Hard of Hearing**, if they encounter a witness participating in a viewing who is deaf or hearing impaired.

This General Order applies to all employees.

DEFINITIONS

Administrator. The employee charged with presenting the photo spread, live lineup, video lineup, or *show-up* to the witness.

Assigned Investigator. The officer primarily responsible for investigating an incident.

Blinded Administrator. An *administrator* who may know the identity of the suspect, but does not know the suspect's position in the *photo spread*, *live lineup*, or *video lineup*.

Double-Blind Administrator. An *administrator* who knows neither the suspect's identity nor the suspect's position in the *photo spread*, *live lineup*, or *video lineup*.

Fillers. The photographs used in a *photo spread* or the individuals used in a *live lineup* or *video lineup* whose race, sex, age, height, weight, hair style, and general appearance resemble the suspect.

Folder Method. A *photo spread* within a folder or envelope that is given to the *administrator* for presentation to the witness.

Lineup. See *live lineup*.

Live Lineup. Also referred to as a *lineup*. The presentation of individuals to a *witness* for the purpose of identifying and eliminating suspects.

Mock Lineup. A *lineup* procedure that is conducted without the presence of witnesses. The lineup is video recorded so that it can be shown to a *witness* at a later time.

Photo Lineup. See *photo spread*.

Photo Spread. Also referred to as a *photo lineup*. A collection of photographs including a suspect photograph and *filler* photographs that are placed in random order and shown to a *witness* for the purpose of identifying and eliminating suspects.

Sequential Viewing. An identification procedure in which *photo spread* photographs or lineup participants are shown one at a time to a *witness*. All photographs or lineup participants are shown to the *witness* even if an identification is made before all individuals are viewed.

Show-up. The presentation of a suspect to a *witness* within two hours following the commission of a crime for the purpose of identifying and eliminating suspects.

Simultaneous Viewing. An identification procedure in which *photo spread* photographs or lineup participants are shown all at once to a *witness*.

Video Lineup. A video recording of either a *live lineup* or a *mock lineup*.

Viewing. The *viewing* of a photo spread, live lineup, video lineup, or *show-up* by a *witness*.

Witness. A term referring to a complainant, eyewitness, or any other form of witness to an incident.

1 ADMONISHMENTS TO WITNESSES

Prior to a viewing for any photo spread, live lineup, video lineup, or *show-up* the administrator shall review the below admonishments with each witness.

Prior to a viewing for any photo spread, live lineup, or video lineup, the administrator shall also have each witness complete the *Witness Admonishment* form (available on the department's Intranet Portal).

- a. The individual who committed the offense may or may not be present.
- b. The witness is not required to select any individual and that it is equally important to clear persons not involved in the crime from suspicion as it is to identify persons believed to be responsible for the crime.
- c. The investigation shall continue whether or not an individual is identified.
- d. Individuals presented may not appear exactly as they did at the time of the incident because features such as head hair, facial hair, and clothing are subject to change.

- e. Individuals presented shall be positioned in random order. (This is not applicable to *show-ups*.)
- f. The *witness* shall not discuss the identification procedure with other witnesses.
- g. While participating in the viewing, the witness shall not speak or make gestures or outcries that may be seen or heard by other witnesses.
- h. While participating in the viewing, the witness shall not look for guidance from the *administrator*.
- i. The *administrator* is prohibited from providing feedback to the *witness* regarding a selection or non-selection.

In addition to the above, prior to any photo spread viewing, the administrator shall admonish each witness to remain in a position so that no one else including the administrator can see the photo spread.

2 PROCEDURES FOR A PHOTO SPREAD (PHOTO LINEUP)

Other than the *assigned investigator* or designee, all officers shall obtain authorization from the concerned investigative division prior to conducting a photo spread viewing.

Photo Spread Composition

A photo spread should contain the suspect's photograph plus a minimum of five *fillers*, whose race, sex, age, height, weight, hair style, and general appearance resemble the suspect. Officers shall create a consistent appearance between the suspect and the *fillers* with respect to any unique or unusual feature (e.g., scars, tattoos, facial hair) used to describe the perpetrator by artificially adding or concealing that feature.

Officers shall avoid using *fillers* who so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the *fillers*.

If possible, all photographs should be of the same type. No photograph type should stand out from the others and the photographs should be reasonably contemporary.

The identity or identifying numbers (e.g., TDL, HPD, or SID) of all *filler* photographs shall be known. If adequate identifiable *fillers* cannot be found, only a shift commander of the concerned investigative division may authorize the use of a *photo spread* that contains unknown *filler* photographs.

The officer creating the *photo spread* shall use the same photographs to produce as many additional photo spreads as needed for multiple witnesses. The photographs in each *photo spread* shall be shuffled to minimize the chances of the suspect's photograph being in the same position in subsequent photo spreads.

Once assembled using the *folder method*, the *photo spread* shall be given to an administrator to be presented to the witness.

Photo spreads involving juvenile suspects are composed and conducted in the same manner as for adults. However, access to the Juvenile Database within the DataWorks Plus application is limited. Officers needing assistance with a juvenile *photo spread* should contact the Juvenile Crimes Unit of the Juvenile Division.

Photo Spread Viewing

The viewing of a photo spread may be video or audio recorded.

Photo spreads may be presented as either a *simultaneous viewing* or a *sequential viewing*. A *photo spread* shall be shown to a *witness* by a *double-blind administrator* using the *folder method*. If the identity of the suspect is widely known such that a *double-blind administrator* cannot be located, then a *blinded administrator* shall present the photo spread. Officers shall document in the incident report the justification for not utilizing a *double-blind administrator*.

The administrator shall be in a position so that the administrator cannot see the photographs while the witness views the photo spread.

Prior to the viewing, the administrator shall admonish each witness as outlined in section 1, *Admonishments to Witnesses*, of this General Order.

The administrator shall not make suggestive statements or gestures that may influence the judgment or perception of the witness.

Multiple witnesses shall be shown separate photo spreads prepared and shuffled as described in the previous subsection. Each witness shall be presented the photo spread outside the presence of the other witnesses. The administrator shall instruct witnesses not to speak to or otherwise communicate with each other regarding the viewing.

Employees shall not provide any feedback regarding the viewing results to the witness.

Following the viewing, the administrator shall ask the witnesses about their observations individually and outside the presence of the other witnesses. Each witness shall be asked if any individual can be identified. Whether or not a witness answers in the affirmative, the witnesses shall be asked to describe in their own words how confident they are of the identification or lack thereof.

If a photo spread viewing results in a positive identification by a witness, the witness shall be asked to sign the photo spread or an acknowledgment confirming the results of the viewing in a manner that shall not be seen by subsequent witnesses.

Whether a viewing results in a positive or negative identification by a witness, the administrator's observations including any statements, gestures, or reactions by the witness shall be documented in the incident report.

Officers shall record in the incident report, the identity or identifying numbers of all persons displayed in the photo spread and their respective positions in each photo spread so that the photo spreads could be reproduced if needed.

All *photo spreads* shall be maintained as part of the case file.

3 PROCEDURES FOR A LIVE LINEUP AND MOCK LINEUP

Other than the *assigned investigator* or designee, all officers shall obtain authorization from the concerned investigative division prior to conducting a *live lineup* or a *mock lineup*.

Rights of a Suspect

A suspect has the right to be represented by an attorney at a *live lineup* to be viewed by a *witness* in the case in which the suspect is charged. The suspect may waive the right to counsel by signing a written waiver.

If a suspect in the above situation does not waive the right to counsel and he or she already has an attorney, the suspect shall be given sufficient notice of the *live lineup* time and location so that the attorney can attend the *viewing*.

If a suspect in the above situation does not waive the right to counsel and he or she is not represented by an attorney, officers shall contact the District Attorney's Office to allow the court to appoint an attorney prior to the live lineup viewing.

An investigator does not have a legal obligation to provide an attorney for a suspect in a *live lineup* under either of the following circumstances:

- a. The suspect is not charged with committing a crime in the case involving a witness viewing the *live lineup*.
- b. The suspect was arrested on a probable cause warrant (a.k.a. pocket warrant) and is placed in a live lineup.

An investigator does not have a legal obligation to provide an attorney for a suspect in a *mock lineup* for video recording purposes.

Even if an investigator does not have a legal obligation to provide an attorney for a suspect, the suspect may still be allowed to make arrangements to have an attorney present for the *live lineup* or *mock lineup*.

A suspect shall be given the option of arranging the order of individuals participating in the *live lineup* or *mock lineup*, including his or her position in the *live lineup* or *mock lineup*.

Live Lineup and Mock Lineup Composition

A live lineup or mock lineup should contain the suspect plus a minimum of four *fillers*, whose race, sex, age, height, weight, hair style, and general appearance resemble the suspect. Officers shall create a consistent appearance between the suspect and the *fillers* with respect to any unique or unusual feature (e.g., scars, tattoos, facial hair) used to describe the perpetrator by artificially adding or concealing that feature.

Officers shall avoid using *fillers* who so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the *fillers*.

Live Lineup and Mock Lineup Viewing

Live lineups or *mock lineups* may be presented as either a *simultaneous viewing* or a *sequential viewing*. Live lineups shall be conducted by a *double-blind administrator*. If the identity of the suspect is widely known such that a *double-blind administrator* cannot be located, then a *blinded administrator* shall present the *live lineup*. Officers shall document in the incident report the justification for not utilizing a *double-blind administrator*.

Prior to the viewing, the administrator shall admonish each witness as outlined in section 1 of this General Order.

The administrator shall not make suggestive statements or gestures that may influence the judgment or perception of the witness.

The administrator shall instruct witnesses not to speak to or otherwise communicate with each other regarding the viewing. The administrator shall also instruct witnesses not to address the suspect or other live lineup participants.

Any instructions to the participants in a *live lineup* or *mock lineup* shall be given by a single *administrator*. The participants in a *live lineup* or *mock lineup* may be asked to speak, repeat certain words, walk, turn, or make a gesture. Any conduct, gesture, or spoken words asked of one participant shall be asked of each participant of the *live lineup* or *mock lineup*.

Any objections to the procedure by the suspect's attorney or any changes that were made as a result of an objection shall be documented in the incident report.

Employees shall not provide any feedback regarding the viewing results to the witness.

Following the viewing, the *assigned investigator* or designee shall ask the witnesses about their observations individually and outside the presence of the other witnesses. Each witness shall be asked if any individual can be identified. Whether or not a witness answers in the affirmative, the witnesses shall be asked to describe in their own words how confident they are of the identification or lack thereof.

If a live lineup viewing results in a positive identification by a witness, the witness shall be asked to sign an acknowledgment confirming the results in a manner that shall not be seen by subsequent witnesses.

Whether a viewing results in a positive or negative identification by a witness, the administrator's and investigators' observations including any statements, gestures, or reactions by the witness shall be documented in the incident report.

Officers shall record in the incident report, the identity or identifying numbers of all persons displayed in the live lineup or *mock lineup* and their respective positions in the lineup. In addition, the report shall include a description of any actions required of the lineup participants and the names of all witnesses and persons *viewing* the lineup.

A record of the live lineup or mock lineup revealing the identity and the positions of the individuals displayed in the *live lineup* or *mock lineup* shall be preserved by a video recording or photograph and maintained as part of the case file.

A juvenile may appear in a physical lineup for the purpose of identification. Due to a number of regulations and limitations, a juvenile lineup should only be considered under the most exigent circumstances. A juvenile lineup shall only be coordinated by the Juvenile Division.

4 PROCEDURES FOR A VIDEO LINEUP

Other than the *assigned investigator* or designee, all officers shall obtain authorization from the concerned investigative division prior to conducting a video lineup viewing.

Video Lineup Composition

Composition requirements for video lineups are the same as for *live lineups* and *mock lineups* outlined in section 3, *Procedures for a Live Lineup and Mock Lineup*, of this General Order.

Video Lineup Viewing

The administrator of a video lineup viewing shall be a *double-blind administrator*. If the identity of the suspect is widely known such that a *double-blind administrator* cannot be located, then a *blinded administrator* shall present the video lineup. Officers shall document in the incident report the justification for not utilizing a *double-blind administrator*.

Prior to the *viewing*, the *administrator* shall admonish each *witness* as outlined in section 1 of this General Order.

The *administrator* shall not make suggestive statements or gestures that may influence the judgment or perception of the *witness*.

The *administrator* shall instruct witnesses not to speak to or otherwise communicate with each other regarding the *viewing*.

Employees shall not provide any feedback regarding the *viewing* results to the *witness*.

Following the viewing, the administrator or an investigator shall ask the witnesses about their observations individually and outside the presence of the other witnesses. Each witness shall be asked if any individual can be identified. Whether or not a witness answers in the affirmative, the witnesses shall be asked to describe in their own words how confident they are of the identification or lack thereof.

If a video lineup viewing results in a positive identification of the suspect by a witness, the witness shall be asked to sign an acknowledgment confirming the results of the viewing in a manner that will not be seen by subsequent witnesses.

Whether a viewing results in a positive or negative identification by a witness, the administrator's and investigators' observations including any statements, gestures, or reactions by the *witness* shall be documented in the incident report.

Officers shall record in the incident report, the identity or identifying numbers of all persons displayed in the video lineup and their respective positions in the video lineup. In addition, the

report shall include a description of any actions required of the video lineup participants and the names of all witnesses and persons viewing the video lineup.

All video lineups shall be maintained as part of the case file.

5 PROCEDURES FOR A SHOW-UP

Due to the inherent suggestiveness of *show-ups*, this practice shall be avoided whenever possible in preference for the use of a photo spread, live lineup, or video lineup. However, if a *show-up* is utilized, the following procedures and restrictions must be followed:

- a. A *show-up* shall not be used more than two hours following the commission of the crime.
- b. The same suspect shall not be presented to the same *witness* more than once.
- c. *Show-up* suspects shall not be required to put on clothing worn by the perpetrator, to speak words uttered by the perpetrator, or to perform other actions of the perpetrator.
- d. Prior to the *viewing*, the administrator shall admonish each witness as outlined in section 1 of this General Order.
- e. The *administrator* shall not make suggestive statements or gestures that may influence the judgment or perception of the *witness*.
- f. Multiple witnesses shall each be presented the suspect outside the presence of the other witnesses. Suspects shall be presented individually to the witness and not as a group. The administrator shall instruct witnesses not to speak to or otherwise communicate with each other regarding the viewing.
- g. If multiple witnesses are involved in a *show-up* procedure, the *show-up* procedure shall end once a *witness* positively identifies a suspect. The contact information of all remaining witnesses shall be documented so a different identification procedure (i.e., *photo spread*, *live lineup*, or *video lineup*) can be subsequently conducted.
- h. The administrator shall not provide any feedback regarding the viewing results to the witness.
- i. Following each viewing, the administrator shall ask the witness about his or her observations individually and outside the presence of the other witnesses. Each witness shall be asked if any individual can be identified. Whether or not a witness answers in the affirmative, the witnesses shall be asked to describe in their own words how confident they are of the identification or lack thereof.
- j. Whether a viewing results in a positive or negative identification by a witness, the administrator's observations including any statements, gestures, or reactions by the witness shall be documented in the incident report.

6 SINGLE WITNESS IDENTIFICATIONS

Situations may arise in which there is only a single witness who identifies a suspect and there is no corroborating evidence to link the identified suspect to the crime committed. All reasonable and practical leads must be investigated in an effort to corroborate or refute the single witness's identification of the suspect. Reviewing supervisors shall ensure these procedures are followed and documented in the incident report.

7 TRAINING

Each division commander shall ensure their personnel receive training in the procedures outlined in this General Order.

8 REFERENCE MATERIAL

Article 38.20, Texas Code of Criminal Procedure, *Photograph and Live Lineup Identification Procedures*



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